HON'BLE THE CHIEF JUSTICE SRI G.S.SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1013 OF 2006

Between:

N.Anasuyamma

. . .Appellant

And

Mandal Revenue Officer,
Maheswaram Mandal,
R.R. District and others

. . .Respondents

::JUDGMENT::

Counsel for the appellant : Sri M.V.S. Suresh Kumar

Counsel for the respondent Nos.1 and 2: Government Pleader for Revenue

Counsel for respondent Nos.3 and 4: Sri B. Siva Kumar

October, 09, 2006

-

Per G.S.Singhvi, CJ

This is an appeal for setting aside order dated 27-6-2006 passed by the learned Single Judge in Writ Petition No.9548 of 2004 whereby he refused to quash proceedings No.D/713/2004 dated 5-6-2004 issued by Mandal Revenue Officer, Maheswaram Mandal, Ranga Reddy District (respondent No.1).

The appellant and two others filed suit for injunction against respondent Nos.3 and 4 and four others in the Court of Principal Senior Civil Judge, Ranga Reddy District by claiming that they were in possession of land measuring Ac.24-24 gts. Comprised in Survey Numbers 236/2 and 237 situated in Srinagar village, Maheswaram Mandal, Ranga Reddy District and that the defendants were trying to dispossess them. The same was registered as O.S.No.679 of 2001. The appellants also filed I.A.No.1055 of 2001 under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short, 'C.P.C') for grant of temporary injunction. The trial court passed an interim injunction on 1-8-2001, which was made absolute vide order dated 17-10-2003.

Respondent Nos.1 and 2 challenged the order of injunction passed by the trial court by filing an appeal under Order 43 Rule 1 of C.P.C. The same was registered as A.A.O. No.4572 of 2003. By an order dated 23-4-2004, a learned Single Judge of this Court allowed the appeal and set aside order dated 17-10-2003 with a direction to the trial Court to dispose of the suit within a period of four months. For the sake of convenient reference, paragraphs 8 to 11 of the order passed by the learned Single Judge are reproduced below:

“8. The appellants specifically pleaded that the suit schedule property remained joint among all the legal heirs of late Raji Reddy. The appellants failed to, at least, indicate prima facie, that the suit schedule property was subjected to partition. They relied upon entries made in the revenue records in the recent past by the MRO. These entries in turn were made on their representation that there existed partition in 1984 and that the suit schedule property was gifted under an unregistered gift deed. The MRO in turn made the entries on the basis of the statement said to have been given by the appellants herein marked as Ex.A.21. If the statement and the entries made by the MRO were still in force, the trial court could certainly have been justified in granting the temporary injunction. However, it is a matter on record that the appellants preferred an appeal against the entries made by the MRO and an order dated 7-12-2002 was passed by the RDO setting aside the same. A specific finding was recorded that the statement in Ex.A.21 said to have been recorded by the MRO is not genuine. The order of the RDO has been affirmed by the Joint Collector, in a revision preferred by the respondents herein.

9. The trial court made a clear observation in its order to the effect that the respondents mainly depend on the proceedings of the revenue authorities and the statements given by the appellants. Once such a material was wiped of, form the record, by the appellate authority, there does not exist any basis for grant of temporary injunction. Consequently, a position obtains that the appellants on the one hand, and the respondents on the other are to be treated as co-owners of the property. Hence, temporary injunction cannot be granted.

10. For the foregoing reasons, the appeal is allowed, and the order dt.17-10-2003 in I.A.No.1055 of 2001 in O.S.No.679 of 2001 is set aside.

11. Till the suit is disposed of, the rights of the parties are to be protected. Though each co-owner has a right to enjoy the property jointly held by them, their acts and omissions cannot be detrimental to the interests of others. Hence, it is directed that till the disposal of the suit, neither the appellants nor the

respondents shall transfer the suit schedule property or any part of it, in any manner or otherwise encumber it. The appellants herein have filed written statements. The suit is of the year 2001 and the parties have undertaken to cooperate with the trial of the matter for early disposal. Hence, the trial court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order."

Petition for Special Leave to Appeal (No.10472 of 2004) filed by the appellant and another was disposed of by the Supreme Court on 24-8-2004 in the following terms:

"The Special leave petition is disposed of with modification of the order of the High Court to the effect that in addition to what the High Court has already directed, namely, expeditious disposal of the suit as well as injuncting the parties from creating any third party rights, the status quo regarding possession will continue until the disposal of the suit."

It is borne out from the record that on the basis of ad-interim injunction granted by the trial court in I.A.No.1055 of 2001, the appellant succeeded in persuading respondent No.1 to issue direction to the Panchayat Secretary, Srinagar Village, Maheswaram Mandal, Ranga Reddy District to incorporate her name in the cultivator's column of the pahanis of Srinagar Village. Accordingly, necessary corrections were carried out in the records. After the decision of the appeal filed by them against order dated 17-10-2003 passed by the trial Court, respondent Nos.3 and 4 applied to respondent No.1 for restoration of the entry in the cultivator's column which existed prior to its correction at the instance of the appellant. Respondent No.1 accepted the request made by respondent Nos.3 and 4 and passed order dated 5-6-2004 whereby he directed the Panchayat Secretary to restore the entry in cultivator's column as it existed prior to the issue of Office Memo dated 31-1-2004.

The aforementioned order was questioned in Writ Petition No.9548 of 2004. The learned Single Judge dismissed the writ petition by observing that in view of the decision rendered by another learned Single Judge of this Court in A.A.O. No.4572 of 2003, respondent No.1 did not commit any error by restoring the entry in the cultivator's column as it existed prior to the issue of Memo dated 31-1-2004.

The only point urged by Sri M.V.S. Suresh Kumar, learned counsel for the appellant is that in view of the direction given by the Supreme Court that status quo regarding possession will continue until the disposal of the suit, respondent No.1 could not have changed the entry in the cultivator's column. He submitted that the direction given by the Supreme Court had the effect of nullifying the order passed by the learned Single Judge in A.A.O. No.4572 of 2003 and, therefore, the same could not have been made basis for changing the entry recorded in the cultivator's column in the pahanis.

In our opinion, there is no merit in the argument/ submission of the learned counsel. A reading of order dated
24-8-2004 makes it clear that without upsetting the order passed by the learned Single Judge in A.A.O. No.4572 of 2003, the Supreme Court ordained that the status quo regarding possession will continue till the disposal of the suit. What respondent No.1 has done by directing the Panchayat Secretary to restore the entries in cultivator's column as it existed prior to 31-1-2004 is nothing more than to remedy the wrong done to respondent Nos.3 and 4 on the basis of injunction order passed by the trial Court. The same cannot be construed as an act intended to overreach the order of the Supreme Court.

We are further of the view that the direction given by the Supreme Court to the parties to maintain status quo regarding possession did not preclude respondent No.1 from entertaining the application made by respondent Nos. 3 and 4 for restoration of the entry in the

cultivator's column which had been changed at the instance of the appellant in view of the order of injunction passed by the trial court. Once the order of injunction was set aside, respondent No.1 was duty bound to correct the entry in the cultivator's column. This is precisely what the officer concerned did on the basis of the application made by respondent Nos.3 and 4. Therefore, the learned Single Judge did not commit any error by refusing to entertain the appellant's prayer and we do not find any valid ground or justification to interfere with the order passed by the learned Single Judge.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.2143 of 2006 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

October 09, 2006

svs